

Sara B. Brody (SBN 130222)  
 SIDLEY AUSTIN LLP  
 555 California Street  
 San Francisco, California 94104  
 Telephone: (415) 772-1200  
 Facsimile: (415) 772-7400  
[sbrody@sidley.com](mailto:sbrody@sidley.com)

Andrew W. Stern (*to be admitted pro hac*)  
 SIDLEY AUSTIN LLP  
 787 Seventh Avenue  
 New York, New York 10019  
 Telephone: (212) 839-5300  
 Facsimile: (212) 839-5599  
[astern@sidley.com](mailto:astern@sidley.com)

*Attorneys for SMART Technologies Inc.,  
 Apax Partners, David A. Martin,  
 Nancy L. Knowlton, G.A. Fitch, Salim Nathoo  
 and Arvind Sodhani*

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

THOMAS E. HARPER and DIANE KEENE,  
 Individually and On Behalf of All Others  
 Similarly Situated,  
 Plaintiffs,  
 vs.  
 SMART TECHNOLOGIES, INC., DAVID A.  
 MARTIN, NANCY L. KNOWLTON, G.A.  
 FITCH, SALIM NATHOO, ARVIND  
 SODHANI, INTEL CORPORATION, APAX  
 PARTNERS, MORGAN STANLEY & CO.  
 INC., DEUTSCHE BANK AG, and RBC  
 DOMINION SECURITIES INC,  
 Defendants.

Case No. 11 CV 5232 (SBA)

Assigned to: Hon. Sandra Brown Armstrong

**DECLARATION OF ANDREW W. STERN  
 IN SUPPORT OF DEFENDANTS' MOTION  
 TO TRANSFER THIS ACTION OR IN THE  
 ALTERNATIVE DISMISS OR STAY THIS  
 ACTION AND STRIKE THE CLASS  
 ALLEGATIONS**

Date: March 13, 2012

Time: 1:00 P.M.

Place: Courtroom 1, 4th Floor

1 I, Andrew W. Stern, declare as follows:

2 1. I am an attorney with the law firm of Sidley Austin LLP, counsel for Defendants  
3 SMART Technologies Inc. (“SMART”), Apax Partners, David A. Martin, Nancy L. Knowlton, G.A.  
4 Fitch, Salim Nathoo and Arvind Sodhani (the “SMART Defendants,” and, together with the other  
5 named defendants, “Defendants”). I have personal knowledge of all facts in this declaration and  
6 would, if called upon to do so, testify competently thereto.

7 2. I make this declaration in support of Defendants’ Motion to Transfer this Action or in  
8 the Alternative to Dismiss or Stay this Action and Strike the Class Allegations.

9 3. On January 26, 2011, plaintiff Thomas McKenna filed a putative class action in the  
10 United States District Court for the Northern District of Illinois on behalf of the purchasers of the  
11 Class A Subordinate Voting Shares of SMART pursuant to SMART’s July 20, 2010 initial public  
12 offering (“IPO”). Mr. McKenna asserted claims under the Securities Act of 1933 based upon  
13 allegations of materially false and misleading statements in the Registration Statement and  
14 Prospectus issued in connection with the IPO. Attached as Exhibit 1 hereto is a true and correct  
15 copy of the original complaint in *McKenna v. SMART Technologies Inc.*, Case No. 11-CV-583 (N.D.  
16 Ill. Jan. 26, 2011) (“*McKenna*”).

17 4. On November 4, 2011, the Lead Plaintiff in *McKenna* filed an amended complaint  
18 (the “amended *McKenna* complaint”). Attached as Exhibit 2 hereto is a true and correct copy of the  
19 amended *McKenna* complaint.

20 5. On March 15, 2011, the *McKenna* defendants moved, pursuant to 28 U.S.C. § 1404,  
21 to transfer *McKenna* to the Southern District of New York. Judge Edmond Chang of the Northern  
22 District of Illinois granted the *McKenna* defendants’ motion to transfer on October 14, 2011.  
23 *McKenna* is now pending in the Southern District of New York before Judge Katherine B. Forrest,  
24 under Case No. 11-CV-7673. Attached as Exhibit 3 hereto is a true and correct copy of Judge  
25 Chang’s October 14, 2011 order granting the motion to transfer.

26 6. On June 16, 2011, Judge Chang, pursuant to the Private Securities Litigation Reform  
27 Act of 1995 (“PSLRA”) appointed as Lead Plaintiff the City of Miami General Employees’ and  
28 Sanitation Employees’ Retirement Trust (“City of Miami Trust”), and approved City of Miami

1 Trust's selection of Bernstein Litowitz Berger & Grossman LLP ("Bernstein Litowitz") as lead  
2 counsel. Attached as Exhibit 4 hereto is a true and correct copy of Judge Chang's order appointing  
3 City of Miami Trust as Lead Plaintiff.

4 7. On August 19, 2011, Lead Plaintiff City of Miami Trust dismissed the underwriter  
5 defendants from *McKenna* pursuant to Fed. R. Civ. P. 41(a)(1), subject to a tolling agreement.  
6 Attached as Exhibit 5 hereto is a portion of the transcript of proceedings before Judge Chang on  
7 October 5, 2011. Attached as Exhibit 6 hereto is a true and correct copy of the notice of dismissal  
8 filed by counsel for the Lead Plaintiff in *McKenna*.

9 8. In December 2010, prior to *McKenna* being filed, two complaints were filed in the  
10 Southern District of New York, *Huffstetter v. SMART Technologies Inc.* and *DeMontravel v. SMART*  
11 *Technologies Inc.*, respectively, alleging claims that were substantively identical to *McKenna*. The  
12 named plaintiffs in these two actions distributed notice to the putative class pursuant to the PSLRA.  
13 Attached as Exhibit 7 hereto are true and correct copies of the class notices disseminated by the  
14 named plaintiffs, Messrs. Huffstetter and DeMontravel.

15 9. Messrs. Huffstetter and DeMontravel voluntarily dismissed their complaints on  
16 February 4, 2011, shortly after Mr. McKenna filed his complaint in the Northern District of Illinois.  
17 Attached as Exhibit 8 hereto are true and correct copies of the notices of voluntary dismissal filed by  
18 Messrs. Huffstetter and DeMontravel.

19 Executed this 8th day of November, 2011, at New York, New York

20  
21 /s/ Andrew W. Stern

22 Andrew W. Stern

23 (pro hac application to be submitted)